

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

Becky Prothro, et al

Civil Action No. 6:04-868

versus

Judge Tucker L. Melançon

Wal-Mart Stores, Inc., et al

Magistrate Judge C. Michael Hill

MEMORANDUM ORDER

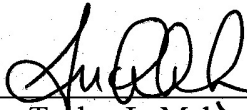
Before the Court is a Motion to Dismiss For Improper Venue filed by defendants, Pacific Cycle, Inc. and Wal-Mart Louisiana, LLC, [doc. no. 88] in which defendants move the Court for a dismissal of plaintiffs' claims because the bicycle accident at issue occurred in Pointe Coupee Parish, in the Middle District of Louisiana.

The record of this case indicates that defendants failed to assert improper venue in their Answer filed on July 1, 2004.¹ A defendant waives the defense of improper venue if he fails to raise it in a motion to dismiss under Rule 12(b) or in his answer. *See* Fed. R. Civ. P. 12(h)(1); *Matter of 5300 Memorial Investors, Ltd.*, 973 F.2d 1160, 1163 (5th Cir.1992) (holding that improper venue is waived if there is no timely objection). Additionally, improper venue does not "impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue." *See* 28 U.S.C. § 1406(b). Because defendants neither filed a Rule 12(b) motion challenging venue in this District nor challenged venue in their Answer, the defense of improper venue is waived. Accordingly,

¹ In paragraph II of their Answer, defendants stated, "plaintiffs failed to state the basis for proper venue." R. 7.

IT IS ORDERED that the Motion to Dismiss For Improper Venue filed by defendants, Pacific Cycle, Inc. and Wal-Mart Louisiana, LLC, [doc. no. 88] is denied.

Thus done and signed this 27th day of January, 2006 at Lafayette, Louisiana.

A handwritten signature in black ink, appearing to read 'Tucker L. Melançon', is written over a horizontal line.

Tucker L. Melançon
UNITED STATES DISTRICT JUDGE